

December 2, 2019

To: Mayor Jesse Arreguin
Council Member, District 1, Rashi Kesarwani
Council Member, District 2, Cheryl Davila
Council Member, District 3, Ben Bartlett
Council Member, District 4, Kate Harrison
Council Member, District 5, Sophie Hahn
Council Member, District 6, Susan Wengraf
Council Member, District 7, Rigel Robinson
Council Member, District 8, Lori Droste

From: The Berkeley Neighborhoods Council Executive Committee
Via e-mail

Our request to the City Council to resolve the issue of current over-billing and under-billing of City of Berkeley square footage based Special Taxes:

The Berkeley Neighborhoods Council (BNC) requests that the Berkeley City Council schedule a Special Meeting on the single subject regarding the long-standing problem of some Berkeley property owners over-paying and some under-paying special taxes which are based upon square footage. The objective of such a Special Meeting is to ensure that taxpayers in Berkeley are treated equally, and that the calculations which are used and which by law are public records, are transparent and fully consistent with existing law as applied to both residential and non-residential properties. We further request that this Special Meeting:

1. Include as active participants. City staff such as the City Manager, City Attorney, staff from the City's Finance and Planning Departments, City Auditor Jenny Wong, the Alameda County Assessor's Office, and the Berkeley Unified School District;
2. Provide opportunities for interaction with community members by allotting adequate time to present their concerns and responses to questions rather than be limited to one or two-minute statements; and
3. Scheduled as soon as possible since property tax bills for 2019-2020 have recently been issued and making changes to any items on that bill will require time for you to consider and implement any changes you determine should be made. We note that the Berkeley School Board has recently approved placing three tax measures based on square footage on the March primary ballot.

What we are *Not* requesting:

Since 1978 and the passage of Prop 13, Berkeley voters have been generous in their approval of new special taxes targeted to specific purposes. We do not challenge that in any way. We are not requesting that the proposed Special Meeting include issues such as whether a tax should have been enacted in the first place, or whether the funds were used wisely, or whether the past rate of tax increases has been properly applied.

We also note that another factor that affects revenues derived from parcel taxes is that some property owners are classified as "exempt." At some point you may want to examine that determination, but we regard that matter as a separate concern, not connected to this request.

The problem:

This letter addresses only those voter-approved special taxes that are assessed on privately-owned (non-exempt) parcels which are based on the taxable amount of square footage of the structure or structures on that parcel. All cities in Alameda County, with the sole exception of Berkeley, use data maintained by the Alameda County Assessor's Office, as adjusted from time to time by improvements to a parcel as indicated by City building permits to determine taxable square footage. The City of Berkeley uses its own unique methodology that is based on information provided by the Building Division which in turn is further modified by the Finance Department to determine taxable square footage. The City sends a list of calculated tax values to the County on behalf of both the City and the Berkeley Unified School District. Significant differences have been found to exist between the data maintained by the County and that used by the City for such taxes. Property owners do not receive any notice about these differences.

The first step that needs to be taken in examining the current system of utilizing a Berkeley methodology rather than the one used by the County is found in Article 670 of the CA Revenue and Tax Code which states " No person shall perform the duties or exercise the authority of an appraiser for property tax purposes as an employee of the state, and county or city and county, unless he or she is the holder of a valid appraiser's or advanced appraiser's certificate issued by the State Board of Equalization."

How long has this problem been going on:

Measure E, the Library Relief Act of 1980 was the first parcel tax based on what is referred to as Berkeley Square Footage Tax (BSFT). In November 1980, following the mailing of the new property tax bills that included this measure, the *Berkeley Gazette* reported that "huge numbers of complaints" had been received by both the City and Alameda County. The article cited some examples - a well-known Alameda County Superior Court judge received an assessment of his home that was three times larger than its actual size. Another individual reported her assessment doubled her total tax bill. While it's unclear how this was handled because online City records don't go that far back, we do know that the problem of how the tax was calculated continued.

In March 15, 2005, City Auditor, Ann-Marie Hogan, CIA, CGAP presented a report to the City Council that noted that "Since discovering that the City did not bill several properties for special taxes and assessments in November 2003, the City has devoted a more assertive and collaborative effort" to improve procedures in recording BSFT changes." She further explained that according to an audit performed in fiscal year 2003, and in continued follow-up efforts, the March 15, 2005 audit was done with the stated objective "to determine whether the "property data used for assessments is materially accurate and complete; and Assessments are computed correctly." The Auditor found: "There is a likelihood that the taxable BSFT for some parcels might have been understated or overstated, resulting in improper assessments." (Page 8 of the report, Finding #3.

Status reports were provided to the Council in 2006, 2007, 2009 and 2010. The audit was closed in March 2012. At that time, then-City Manager Daniels stated in a written report to the Council:

“The Berkeley Municipal Code taxation chapter and the ballot measures approving the special taxes have a definition of eligible square footage that matches the Planning Division definition of gross floor area but differs from the Building Code definition of gross floor area. Staff acknowledges the Auditor’s finding that having two definitions adds complexity to the system as staff is required to use and track two separate definitions of floor area for purposes of ensuring accurate assessment of taxes. However, revising the definitions to conform to the new International Building Code definition has a significant downside in terms of potential revenue loss.” (Note: Emphasis has been added.)

This statement confirms the continued existence of differences between City and County data that result from the application of the BSFT system used by the City. However, more importantly, it is disturbing that the City’s concern is focused on “potential revenue loss,” and not upon fixing a system in order to achieve equity among property owners.

The Special Tax Measures that are based on square footage:

Twenty-two “Fixed rate and/or Special Assessments” appear on 2019-2020 City of Berkeley Alameda County Secured Property Tax Statements for residential properties. These are listed below using the designation as it appears on current tax bills:

CITY ST LIGHTING
CITY LANSCAP/PARK
CITY LIBRARY SVC
PARAMEDIC SUPP;MNT
FIRE/EMG SRVC TAX
PERALTA CCD MEAS B
SCHOOL MAINTENACE
SCHL ED PROGS/BSEP
PHS DISABLED

The square footage of buildings used to calculate the amount of tax generated by each measure is not shown on property tax bills.

Council involvement is necessary to resolve this problem:

Property owner attempts to resolve the problem that has resulted in some properties being over-assessed and others being under-assessed have not been successful. One property owner examined a list of recently sold properties that she felt indicated about 30 per cent were under-assessed. Several properties for sale currently have grossly underestimated square footage if it is correct to include crawlspaces in the calculation, as has been the case for some taxpayers. This experience illustrates that City assistance to develop and install an equitable system is not only essential but that the determination to undertake system reform must come as a directive from the Council.

We note, a letter from the Director of Finance, in response to a property owner who raised questions about properties being under-assessed stated that the Department will “consider whether and how researching potentially under assessed properties fits into the department’s work plan, but there are other obligations and responsibilities of the department that currently take priority.” A few days later the Director advised a different property owner that a claim of

over-assessment could result in a refund that would be limited to four years instead of the longer term claimed by the owner.

BNC points out that this is a systemwide problem, not one of an incorrect calculation regarding an individual parcel that occurs from time to time. The current City system, which affects thousands of property owners, needs to be corrected throughout its whole application so that all are treated equally, that all assessments are done ethically, and that everyone understands the process being used. Although more and more people are becoming aware of the problem, most still do not even know about it because they have never received any notice whatsoever about the differences between the County and City data. Even when purchasing property, at the point where property taxes are disclosed to new buyers during the closing process, BSFT is not disclosed. Alameda County numbers are used at that time. If people don't know about a problem why should they be limited to a defined period of time to redress the problem? This question has become more pertinent after the recent passage of AB 102, which aims to ensure "a tax administration and appeals process that is fair, transparent, consistent, equitable, and impartial"

Knowing of these problems, the complexities of resolving them, and the impacts on those who have been overpaying and those who have been underpaying, should not deter you from taking action. The equitable application of voter approved taxes is a fundamental principle of democratic governance, it cannot be ignored. The time has come for the City to resolve this long-standing problem.

BNC thanks you for consideration of these views and we look forward to participating in a Special Meeting to address this problem.

Sincerely,

The Berkeley Neighborhoods Council Executive Committee,

Dean Metzger, Chair
Shirley Dean, Vice Chair
Janis Ching, Treasurer
David Ushijima, Secretary
Meryl Siegel, Board Member